

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2299 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SWASTIK CONSTRUCTION CO.

Versus

SARDAR PATEL UNIVERSITY

Appearance:

MR MG NAGARKAR FOR MR.NILESH A PANDYA for Petitioner
MR NV ANJARIA for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/10/97

ORAL JUDGEMENT

Rule.

Mr.Anjaria waives service of rule.

2. This petition challenges the decision of the Sardar Patel University (hereinafter referred to as the University) for black-listing the petitioner which is a partnership firm carrying on business of a building contractor.

3. The petitioner had carried out a construction project assigned by the respondent University. Thereafter the petitioner was served with notice dated February 6, 1997 (Annexure G) pointing out certain deficiencies in the work carried out by the petitioner. The petitioner submitted his reply (Annexure H) alongwith the explanation on the technical aspects. The building committee of the respondent University thereafter considered the case and did not find the petitioner's explanation to be satisfactory and accordingly the respondent university has decided as per communication dated February 14, 1997 (Annex.I) not to issue any construction tender to the petitioner in future and not to consider any tender which might have been submitted by the petitioner and also to put the petitioner in the black-list of building contractors. It is the aforesaid decision which is challenged in the present petition.

4. Mr.Nagarkar, learned Counsel for the petitioner has challenged the decision on the following grounds:

- (1) the show cause notice did not call upon the petitioner to show cause against black-listing. Hence the decision to black-list the petitioner was taken without giving any notice or hearing.
- (2). The building committee had already taken the decision on January 27, 1997 to black list the petitioner and thereafter the show cause notice dated February 6, 1997 was issued in respect of deficiencies in construction. Hence there was no effective hearing. The committee had already prejudged the issue.
- (3). The gravity of action of the University is serious because the original communication received by the petitioner dated February 14, 1997 clearly indicates that the copy of the aforesaid communication was sent to a number of parties at Anand, Karamsad, Vallabh Vidyanagar, Nadiad, Kheda, including various government authorities and other eminent institutions in Kheda District. It is therefore, submitted that the decision to black list the petitioner has been taken without affording any opportunity to the petitioner and the petitioner has been exposed to serious prejudice.

5. On the other hand, Mr.Anjaria for the respondent

has relied upon the affidavit filed by the Deputy Registrar on behalf of the respondent university and has submitted that the petitioner was awarded a contract pursuant to the work-order dated June 16, 1993. There were a large number of complaints against the petitioner and therefore, the committee gave opportunity to the petitioner by letter dated February 6, 1997 to explain about the deficiencies in the workmanship and the petitioner submitted his explanation by his letter dated February 10, 1997 which was not found satisfactory and recommendation was made by the committee that the tender of the petitioner should not be considered in future and the impugned decision was taken by the Syndicate at its meeting held on February 12, 1997. It was submitted that sufficient opportunity was given to the petitioner. More over the petitioner also made a subsequent representation dated March 1, 1997 requesting the authorities to withdraw the order of black listing the petitioner. The said representation was considered by the Vice Chancellor and has been rejected. It is therefore, submitted that in any view of the matter, there has been a post decisional hearing and the petition deserves to be dismissed as there was sufficient compliance with the principles of natural justice which should not in any case be stretched too far.

6. Having heard the learned Counsel for the parties, it is true that the University had given notice dated February 6, 1997 and the reply of the petitioner was considered by the Building Committee but a perusal of the minutes of the meeting of the Building Committee held on January 27, 1997 clearly shows that at item No.5, the building Committee had already decided to black list the petitioner. The said minutes are produced at Annexure II to the affidavit-in-reply. In view of the above, it is clear that the subsequent notice given by the respondent University dated February 6, 1997 cannot be said to be sufficient compliance with the principles of natural justice because the notice was issued after the aforesaid decision and the notice itself did not call upon the petitioner to show cause why he should not be black listed. Looking to the fact that black listing of a contractor would result into serious adverse consequences in as much as the decision to black list the petitioner though confined to the respondent university, is made known to all the leading institutions and government organizations in the district and therefore, even the other authorities/institutions with whom the petitioner may be carrying on or likely to carry on business as a building contractor would be prejudiced against the petitioner.

7. In the aforesaid view of the matter, it must be held that the impugned decision communicated to the petitioner vide letter dated February 14, 1997 at Annexure I was taken in violation of principles of natural justice which has caused serious prejudice to the petitioner. The case is clearly covered by the decision of the Apex Court in the case of M/s.Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and another, AIR 1975 SC 266. In view of the fact that the Building Committee had already taken decision on January 27, 1997 even before issuance of the show cause Notice dated February 6, 1997 (which in any case did not call upon the petitioner to show cause against the black listing) it would be just and proper to direct the respondent University to include one outside expert in the building committee which will consider the matter afresh after issuance of the show cause notice to the petitioner on the question of black listing the petitioner.

8. In view of the aforesaid discussion, the petition is allowed. The impugned decision at Annexure I to the petition purporting to black list the petitioner and in so far as it decides not to accept the petitioner's tender in future is hereby quashed and set aside. The respondent University is, however, at liberty to take appropriate decision and action in accordance with law. However, the hearing pursuant to the show cause notice which may be given hereinafter shall be given by a committee, which shall include an outside expert in building construction.

9. Rule made absolute to the aforesaid extent with no order as to costs.

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